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THE DEFENCE OF ADMIRAL KEPPEL.

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DEFENCE

OF

ADMIRAL KEPPEL.

The Speech of the Honorable AUGUSTUS KEPPEL, *before the* COURT-MARTIAL, *in opening his* DEFENCE, *January the* 30*th*, 1779.

Mr. Preſident and Gentlemen of the Court,

I AM brought before you, after forty years ſervice, on the charge of an officer under my command, for a variety of offences, which, if true or probable, would be greatly aggravated by the means I have had, from a long experience of knowing my duty, and by the ſtrong motives of honor, which ought to have incited me to perform it to the very utmoſt extent of my ability.

Sir Hugh Palliſer, an officer under my orders, conceiving that I have acted very irregularly and very culpably in the engagement with the French fleet on the 27th of July laſt, ſo very irregularly, and ſo very faulty, that I have tarniſhed the luſtre of the Navy of England:

Poſſeſſed with this opinion, on our return to port after the action, he has a letter from the Lords of the Admiralty put into his hands, giving me in the moſt explicit terms, his Majeſty's approbation for a conduct, which he now affects to think deſerves the utmoſt diſapprobation and the ſevereſt cenſure, and he, with the other Admirals and Captains of the fleet, to whom it was likewiſe communicated, perfectly acquieſces in it.

With the ſame ill opinion of my conduct in his boſom, he goes to ſea again under my command; he goes to ſea

under me, without having given the leaſt vent to his thoughts, either by way of advice to myſelf, or of complaint to our common ſuperiors.

He afterwards correſponds with me on terms of friendſhip; and in this correſpondence he uſes expreſſions, which convey a very high opinion of my diſintereſtedneſs, and of my zeal for the ſervice.

After all this I come home; I am received by his Majeſty with the moſt gracious expreſſions of favor and eſteem; and I am received in the moſt flattering manner by the Firſt Lord of the Admiralty.

Several weeks paſs when at length, without giving me any previous notice, the Board of Admiralty ſend me five articles of charge, on which they declare their intention of bringing me to my trial; theſe charges are brought by Sir Hugh Palliſer; who nearly at the ſame time publickly declared, that he had taken this ſtep from an opinion, that he himſelf lay under an imputation of diſobedience to my orders, and that this imputation was countenanced by me. I may ſay without the leaſt heſitation, that if I ſhould be cenſured on ſuch a charge (which in this Court and with my cauſe I think impoſſible) there is an end of all command in the Navy, if every ſubordinate officer can ſet up his judgment againſt that of his Commander in Chief; and after ſeveral months of inſidious ſilence can call him to trial, whenever he thinks it uſeful for the purpoſe of clearing away imputations on himſelf, or in order to get the ſtart of a regular charge, which he apprehends may poſſibly be brought on his own conduct—there can be no ſervice.

If the charges of my accuſer could be juſtified by his apprehenſions for himſelf, he has taken care to prove to the Court, that he had very good reaſon for his fears: but if theſe charges are to be conſidered as ſupported upon any rational ground, with regard to the nature of the offence, or any ſatisfactory evidence with regard to the facts, as againſt me, he makes that figure, which I truſt in God, all thoſe who attack innocence will ever make.

In your examination into that judgment, which my officer in order to depreciate my ſkill and to criminate my conduct, has thought proper to ſet up againſt mine, you have very wiſely, and according to the evident neceſſity of the caſe, called for the obſervations and ſentiments of all the officers who have ſerved in the late engagement, ſo far as they have been brought before you by the Proſecutor. I take it for granted

granted you will follow the ſame courſe with thoſe that I ſhall produce. If this ſhould not be done, an accuſer (according to the practice of mine) by the uſe of leading queſtions, by putting things out of their natural order, by confounding times, and by a perplexed interrogatory concerning an infinite number of manœuvres and ſituations, might appear to produce a ſtate of things directly contrary to the ideas of thoſe who ſaw them with their own eyes. I am aſtoniſhed, that, when an officer is accuſed by another of crimes, which, if true, muſt be apparent to a very ordinary obſervation and underſtanding, that any witneſs ſhould, on being aſked, refuſe to declare his free ſentiments of the manner in which the matters to which he depoſes have appeared to him; I never wiſhed, that any gentleman ſhould with-hold that part of his evidence from tenderneſs to me; what motives the accuſer had for obecting to it, he knows.

The pleineſt and fulleſt ſpeaking is beſt for a good cauſe. The manifeſt view and intention that things are done with, conſtitute their crime or merit. The intentions are inſeparably connected with the acts; and a detail of military or naval operations, wholly ſeparated from their deſign will be nonſenſe. The charge is read to a witneſs, as I apprehend, that he may diſcern how the facts he has ſeen, agree with the crimes he hears charged. Otherwiſe I cannot conceive why a witneſs is troubled with that reading. The Court can hardly enter fully into the matter without ſuch information; and the world, out of our profeſſion, cannot enter into it at all; theſe queſtions, I am informed, are properly queſtions of fact; and I believe it, they are perfectly conformable to the practice of Court-Martials, but if they were queſtions to mere opinion, yet the Court, not the witneſs, is anſwerable for the propriety of them. Maſters have been called here by the Proſecutor (and the propriety not diſputed) for mere opinions, concerning the effect of chacing on a lee-ſhore; in higher matters higher opinions ought to have weight, if they ought, there are none more capable of giving the Court information than thoſe who are ſummoned here; for I believe no country ever was ſerved by Officers of more, gallantry, honor, ability, and ſkill in their profeſſion.

You are a Court of Honour as well as of ſtrict Martial Law. I ſtand here for my fame, as well as for my life, and for my ſtation in the Navy; I hope, therefore, that in a trial, which is not without importance to the whole ſervice, you will be ſo indulgent as to hear me with patience, whilſt I explain

to you every thing that tends to clear my reputation as a man, as a ſeaman, and as a commander. I will open it to you without any arts; and with the plain freedom of a man bred and formed as we all are.

As I am to be tried for my conduct in command, it is proper I ſhould lay before you my ſituation in that command, and what were my motive for the ſeveral acts, and orders, on account of which I ſtand charged. I muſt beg leave to make ſome explanation of theſe, before I enter upon the accuſations, article by article.

To the five ſpecial articles of the charge, you may depend upon it, I ſhall give full, minute, and ſatisfactory anſwers, even on the narrow and miſtaken principles on which ſome of them are made. But I beg leave to point out to you, that there is a general falſe ſuppoſition, that runs through the whole; in cenſuring me for miſconduct and neglect of duty, my accuſer has conceived very miſtaken notions of what my duty was; and on that bad foundation he has laid the whole matter of his charge.

I think myſelf particularly fortunate, in being able to make out by evidence at this diſtance of time, with ſo much exactneſs as I ſhall do, the various movements which were made, or ordered in the action of the 27th of July. It is a piece of good fortune which cannot often happen to a Commander in Chief in the ſame circumſtances. In an extenſive naval engagement, and in the movements preparatory to it, ſubordinate officers if they are attentive to their duty, are fully employed in the care of their own particular charge, and they have but little leiſure for exact obſervation on the conduct of their Commander in Chief; it is their buſineſs to watch his ſignals, and to put themſelves in a condition to obey them with alacrity and effect. As they are looking towards one thing, and he is looking towards another, it is always a great chance whether they agree, when they come to form an opinion of the whole.

You are ſenſible, Gentlemen, that one of the things which diſtinguiſh a Commander in Chief, is to know how to catch the proper moment for each order he gives. He is to have his eye on the enemy; the reſt ought to have their eyes on him. If thoſe ſubordinate officers, who are inclined to find fault with him, do not mark the inſtant of time with the ſame preciſion which he does, their judgment will often be erroneous; and they will blame, where perhaps there is the greateſt reaſon for commendation.

Beſides

Beſides it muſt be obvious, when we conſider the nature of general engagements, that in the multitude of movements that are made, and the variety of poſitions in which ſhips are ſucceſſively found, with regard to one another, when in motion over a large ſpace, (to ſay nothing of the ſmoke) things ſcarcely ever appear exactly in the ſame manner to any two ſhips. This occaſions the greateſt perplexity and confuſion in the accounts that go abroad; and ſometimes produces abſolute contradictions between different relators, and that too without any intentional fault in thoſe who tell the ſtory. But wherever the Commander in Chief is placed, *that* is the center of all the operations; that is the true point of view from which they muſt be ſeen by thoſe who examine his conduct; becauſe his opinion muſt be formed, and his conduct regulated by the judgment of his eye upon the poſture in which *he* ſees his object, and not from the view which another in a different, and perhaps diſtant poſition has of them: and in proportion as he has judged well or ill upon that particular view, taken from that particular poſition, (which is the only point of direction he can have) he deſerves either praiſe or cenſure.

On theſe principles I wiſh my manœuvres to be tried, when the proper conſideration is whether they have been unſkilfully conceived, or as the charge expreſſes it, in an un-officer like manner. But my reaſons for prefering any one ſtep to another, ſtand upon different grounds; all that he charges as negligence, was the effect of deliberation and choice: and this makes it neceſſary for me to explain as fully, as I think it right to do, the ideas I acted upon.

I am not to be conſidered in the light in which Sir Hugh Palliſer ſeems to conſider me, merely as an officer with a limited commiſſion, confined to a ſpecial military operation, to be conducted upon certain military rules, with an eye towards a Court Martial, for my acquittal or condemnation, as I adhered to thoſe rules, or departed from them. My commiſſion was of a very different ſort: I was entruſted with ample diſcretionary powers for the immediate defence of the kingdom. I was placed in ſome ſort, in a political as well as a military ſituation; and though, at my own deſire, for the purpoſes of uniformity and ſecrecy, my inſtructions came to me through the Admiralty alone, yet part of them originated from the Secretary of State, as well as from the Board. Every thing which I did as an officer was ſolely ſubſervient and ſubordinate to the great end of the national defence. I manœuvred;

I fought; I returned to port; I put to ſea; juſt as it ſeemed beſt to me for the purpoſe of my deſtination. I acted on theſe principles of large diſcretion, and on thoſe principles I muſt be tried. If I am not, it is another ſort of officer, and not one with my truſt, and my powers, that is on trial.

It is undoubtedly the duty of every ſea officer, to do his utmoſt to take, ſink, burn and deſtroy the enemy's ſhips whereever he meets them. Sir Hugh Palliſer makes ſome charge on this head, with as little truth, reaſon, or juſtice, as on any of the others. He ſhall have a proper anſwer in its proper place; that is, when I come to the articles. But in juſtice to the principles, which directed me in my command, I muſt beg leave to tell you, that I ſhould think myſelf perfectly in the right, if I poſtponed, or totally omitted that deſtruction of ſhips in one, in two, or in twenty inſtances, if the purſuit of that object ſeemed to me detrimental to matters of more importance; otherwiſe it would be a crime for a Commander entruſted with the defence of the kingdom, to have any plan, choice, or foreſight in his operations. I ought to conduct myſelf, and I hope I did, in each particular, by my judgment of its probable effect on the iſſue of the whole naval campaign, to which all my actions ought to have a relation. Without attending to that relation, ſome particulars of my conduct on the 27th and 28th of July cannot appear in the light which I imagine they are fairly intitled to; and ſome circumſtances of my lenity towards Sir Hugh Palliſer, will incur a cenſure they do not deſerve.

I have reflected again and again on that buſineſs; and if I were to be once more in that ſituation, I am perſuaded that I ſhould act in all reſpects very much in the ſame manner. I have done my beſt and utmoſt, not merely to comply with an article of war (I ſhould be aſhamed that ſuch a thing, at ſuch a time could have engaged my thoughts) but to defend the kingdom; and I have reaſon to thank God, that whatever obſtructions I met with in ſervice, or whatever ſlanders and accuſations have followed me afterwards—the kingdom has been defended.

My capacity may be unequal to the truſt which was placed in me. It is certainly very unequal to the warm wiſhes I have ever felt for the ſervice of my country. Therefore if I had intrigued or ſolicited the command, or if I had bargained for any advantage on accepting it, I might be blamed for my preſumption. But it came to me intirely unſought, and on accepting

accepting it, I neither complained of any former neglect, nor ſtipulated for any future gratification.

It is upwards of two years ago, that is in November 1776, that I received a meſſage from Lord Sandwich, brought to me by Sir Hugh Palliſer, that the appearance of foreign powers in our diſputes, might require a fleet at home; and that he had his Majeſty's orders to know whether I would undertake the command. I ſaid that I was ready to attend and give my anſwer in perſon to the King.

Being admitted into the cloſet, I gave ſuch an one as ſeemed ſatisfactory to his Majeſty; and having delivered my opinions with openneſs, I ended with a declaration of my willingneſs to ſerve him, in the defence of this country and its commerce, whenever I ſhould be honoured with his commands, and as long as my health permitted.

The appearance on the part of foreign powers not continuing (I ſuppoſe) to give ſuch alarm, I heard no more of the command from November 1776, to February or March 1778. At that time I had hints conveyed to me that I might ſoon be wanted—I was as ready to obey the King as I had been ſixteen months before; and when required, to ſerve; I had two or three audiencies of his Majeſty before I left London finally to hoiſt my flag. I muſt remark, that I took the freedom to expreſs to his Majeſty, that I ſerved in obedience to *his* commands; that I was unacquainted with his miniſters, as miniſters; and that I took the command as it was, without making any difficulty, and without aſking a ſingle favour: truſting to his Majeſty's good intentions and his gracious ſupport and protection.

Circumſtanced as I was, I could have no ſiniſter and no ambitious views; in my obedience I riſqued a great deal, and I expected nothing. Many things diſpoſed me rather to ſeek my eaſe than any new employment, and gave me a very natural reluctance to put a ſituation ſo difficult to mend, to any new hazards.

That hazard, Gentlemen, is very great to a Chief Commander who is not well ſupported at home; the greater the command, and the larger the diſcretion, the more liable the commander is, in the courſe of ſervice, to haſty, ignorant, envious, or mutinous objections to his conduct; and if he has not a candid and equitable acceptance of his endeavours at home, his reputation may be ruined, his ſucceſſes will be depreciated, and his misfortunes, if ſuch ſhould befall him, will be turned into crimes. But the nation was repreſented to me,

me, by thoſe, who ought beſt to know its condition, as not in a very ſecure ſtate. Although my forty years endeavours were not marked by the poſſeſſion of any one favour from the Crown (except that of its confidence in time of danger) I could not think it right to decline the ſervice of my country.

I thought it expedient to lay before you a true ſtate of the circumſtances under which I took the command, that you might ſee, that if I am that incapable and negligent officer which the charge repreſents me, I did not intrude myſelf into command; that I was called to it by the expreſs orders of my Sovereign; that theſe orders were conveyed to me by his chief miniſter of the Marine, with great ſeeming concurrence and approbation; that the meſſenger, (who alſo appeared to be perfectly pleaſed with his errand) was no other than Sir Hugh Palliſer, my accuſer; who ought to have been a judge of my ability from a very long acquaintance; and that laſtly, this was no matter of ſurprize and hurry, ſince they had ſixteen months time to conſider and canvaſs my fitneſs for a great diſcretionary truſt, before they placed it in my hands.

If I gave no juſt cauſe of doubt about my real character before my appointment, I gave as little cauſe of uneaſineſs afterwards. From the moment of my taking the command, I laid down to myſelf one rule, which, in my opinion, where there are honeſt intentions on all ſides, does more to enſure ſucceſs to ſervice, than almoſt any other that can be conceived; which was, "*to make the beſt of every thing.*" The whole fleet will bear me witneſs, that it was not my cuſtom to complain, though it is generally thought good policy to be very exact by way of precaution. If any thing was defective, I ſtated it in confidence, and with good humour, to the Firſt Lord of the Admiralty; I received my ſupplies with acknowledgment; what could not be helped, I concealed; I made no noiſe; nor encouraged, much leſs excited, any murmurings in or out of the fleet.

I correſponded with the noble Earl at the head of the Admiralty; and I did every thing with reference to him exactly in the ſame way as if my beſt and deareſt friends were in that department. Having none but the plaineſt intentions, I was much more willing to take any blame upon myſelf, than lay it upon thoſe who ſent me out, or on thoſe who ſerved under me. I was open and unguarded, and, in general I ſtudied my language very little, becauſe I little ſuſpected, that traps would be laid for me in my expreſſions, when my actions were without reproach.

I very

I very ſoon found how neceſſary it was for one in my ſituation to be well ſupported by office. On my firſt going to Portſmouth, which was in March laſt, I was made to believe, that I ſhould ſee a ſtrong and well appointed fleet ready for ſea; an opinion of that kind was circulated very generally. There were not more than ſix ſhips of the line aſſembled, and in any condition to go upon ſervice; of them, all I ſhall ſay is, that on reviewing them, even with a ſeaman's eye, they gave me no pleaſure; whilſt I continued at Portſmouth, I believe four or five more arrived. I returned to town without making any noiſe, I repreſented amicably this ſtate of things. I was told that the ſhips were collecting from other ports, and from ſea; and I muſt ſay, that from that time forward, great diligence was uſed; as much, I believe, as was poſſible. If there had not, we never could have ſailed, even with the force we went out with.

On the thirteenth of June, I ſet ſail from St. Helen's with twenty ſhips of the line, well enough equipped; that is, neither of the beſt, nor the worſt, I had ever ſeen. I was on my ſtation, when a new occaſion occurred, to ſhew me, how much a Commander, entruſted as I was, muſt take upon himſelf; how much he muſt venture on his own diſcretion, and how neceſſary it is for him to have a proper ſupport. The circumſtances of my falling in with the French frigates, Pallas and Licorne, and of the chace, and the engagement with the Belle Poule, (ſo honourable to Captain Marſhall) are freſh in your memories. I undertook the affair at my own riſque. War had not been declared, nor even repriſals ordered. My ſituation was ſingular, I might be diſavowed, and a war with France laid to the account of my raſhneſs. There was not wanting ſome diſcourſe of that tendency, among people whoſe opinions are of moment.

I repreſented what I had done, and to this hour I have not received one ſyllable of direct or official approbation of my conduct.

I found, however, that the taking of the ſhips was important to the ſtate, the papers I found in them, and the intelligence I received by that means, filled me with the moſt ſerious apprehenſions. I was on the enemy's coaſt, with twenty ſail of the line; there were thirty two in Breſt road and Breſt water, and frigates more than treble my number.

My orders to ſail with twenty ſhips could not have been upon a ſuppoſition of my having to deal with ſuch a force.

I know what can be done by Engliſh officers and Engliſh ſeamen, and I truſt to it as much as any man; I ſhould not be diſcouraged by ſome ſuperiority againſt me in ſhips, men and metal, but I have never had the folly to deſpiſe my enemy. I ſaw that an engagement under ſuch circumſtances of decided ſuperiority on the part of France, would hazard the very being of this kingdom. If our fleet ſhould be deſtroyed, it was evident that the French muſt become maſters of the ſea, for that campaign at leaſt; whether we could ever repair the loſs is very clear to me, when I conſider the ſtate of our naval ſtores at that time, and the extreme difficulty of a ſupply, as long as the French ſhould continue ſuperior in the channel.

It is impoſſible to ſay to what ſuch a calamity might not lead. I was filled with the deepeſt melancholy I ever felt in my life, I found myſelf obliged to turn my back on France, but I took my reſolution. I again riſqued myſelf on my own opinion, I quitted my ſtation, my courage was never put to ſuch a trial as in that retreat, *but my firm perſuaſion is, that the country was ſaved by it.* Thoſe in power, who muſt have underſtood the ſtate of the fleet, and of the kingdom, were the beſt able to diſcern the propriety of my conduct. But I was permitted to go out again in the ſame important command, very unworthy of the truſt if I had done amiſs: very deſerving of commendation and thanks, if at my own riſque I had preſerved the country from no ſlight danger—one or other of theſe was certainly the caſe—but the fact is, that I was continued in the command; but did not then receive, nor have I yet received, any more than I had on the former occaſion of taking the French ſhips, one word of official approbation.

All theſe diſcouraging circumſtances, did not abate the zeal I felt for the ſafety of my country; or diſguſt me with its ſervice, or diſturb my temper. On my return to Portſmouth I made no complaint, I did every thing to ſtifle diſcontent, and to get forward for ſea again without divulging the true ſituation of affairs, although I found myſelf in publications which are conſidered as countenanced by authority, moſt groſly abuſed, and threatened with the fate of Admiral Byng.

I had returned to Portſmouth on the 27th of June, and on the ninth of July, finding my fleet made up to twenty four ſhips of the line of battle, with four frigates, and two fire-

ſhips,

ſhips, I ſailed again in obedience to my inſtructions; truſting to ſuch reinforcement as I was given to expect would join me at Plymouth, off the Lizard, and at ſea; by ſeveral reinforcements of ſhips, manned as the exigency would permit, the fleet was made up to thirty ſail of the line. After this, although I was much ſhort of a proportionable number of frigates, and muſt naturally be ſubject to many inconveniences from that want, I had on the whole no juſt cauſe for uneaſineſs. The greateſt part of the ſhips were in good condition, and well appointed; and where any thing was wanting, the zeal of the Commanders abundantly ſupplied it.

The appearance of the French fleet confirmed the ideas upon which I had returned to Portſmouth; for on the 8th of July, the day before I left St. Helen's, they ſailed out of Breſt thirty-two ſail of the line. On the 23d the fleets of the two nations firſt came in ſight of each other. I believe the French Admiral found me much ſtronger than he expected, and from thence he all along ſhewed, as I conceived, a manifeſt diſinclination to come to an engagement. I do not ſay this as meaning to call his courage in queſtion, very far from it. I am certain that he is a man of great bravery, but he might have many very reaſonable motives for avoiding a deciſive action.

Many objects of the French, and thoſe very important, might be obtained without a battle. On my part I had every motive which could make me earneſt to bring it on, and I was reſolved to do ſo whenever, and by whatever means I could.

I ſhould be criminal indeed if I had not, for I had every motive for deſiring to preſs on an action; the greateſt body of the Britiſh trade was then on its return home. Two Eaſt India, and two Weſt India fleets of immenſe value were hourly expected; from the courſe it was probable they would hold, and from the ſituation of the French fleet, they might be taken in my ſight, without a poſſibility of my preventing it. Beſides this, I know that two fleets, where one of them chuſes to decline battle, may be for a very long time near one another, without any means of bringing on an engagement.

I cannot be certain whether the account I have read be quite exact: but it ſhould appear by that account, that in King William's reign, Admiral Ruſſel continued for two months almoſt in the daily view of the French fleet, without having it in his power to fight them. I do not think the thing at all impoſſible.

I had alſo other reaſons for the greateſt anxiety to bring on an engagement upon any terms that I could obtain it.

Theſe reaſons are weighty; and they are founded in my inſtructions. I gave notice to the Admiralty, that I might find it uſeful to my defence to produce thoſe inſtructions on my trial. They communicated to me his Majeſty's pleaſure thereupon, and informed me that they could not conſent that my inſtructions ſhould be laid before my council, or be produced at the Court Martial. I was much ſurpriſed at this anſwer, as I conceived that thoſe who were much better judges than I could be of what was matter of ſtate, could never have thought of putting me in a ſituation which might compel me in my defence to produce the inſtructions under which I acted, when at the ſame time they meant to refuſe me the fair and natural means of my juſtification. It is my undoubted right, if I think proper, to avail myſelf of them. On former trials they have been generally ſent down with the accuſation, that the conduct of the Admiral might be compared with his inſtructions. But leaving the Admiralty to reflect on the propriety of their conduct, it is my part to take care of my own. I have always been willing to run any hazard for the benefit of the ſtate—I ſhall not produce thoſe inſtructions—I have not even ſhewed them to my Counſel, nor communicated their contents. But my declining to make uſe of my own rights, cannot, in a like caſe hereafter, affect the right of any other man.

The world will judge of the wiſdom and equity of ordering trials under ſuch circumſtances.

On the 27th of July, I came to an action with the French; they were beaten, and obliged to retire into their own port. No one can doubt, but a Commander in Chief who is to reap the principal ſhare of the glory, will be earneſt to have his victory as compleat as poſſible. *Mine did not* anſwer to my wiſhes, nor to my juſt expectations. I was fully reſolved to renew the engagement; why it was not renewed, will appear when I come to the particulars of the charge.

As to my conduct after the engagement, I might have purſued a fruitleſs and a moſt hazardous chace of ſome few ſhips, (I know not to this hour with certainty what they were, nor does my accuſer) if I had had my mind filled with notions unworthy of my ſtation, I might eaſily have paraded with my ſhattered fleet off the harbour of Breſt. I choſe rather to return to Plymouth with all expedition, to put myſelf once more in a condition to meet the enemy, and defend the king

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dom. But on my return, I took care to leave two men of war of the line on a cruize to protect the trade. By the vigilance of commanders, and the happy effect of the late advantage, the expected fleets all came in ſafe.

At Plymouth I loſt no time, and omitted no means of putting myſelf in a ſtate fit for action. I did every thing to promote an unanimous exertion; and I found my endeavours well ſeconded by all the Admirals and Captains of the fleet. This benefit I acquired by avoiding a retroſpect into the conduct of the Vice-Admiral of the Blue; for if I had inſtituted an inquiry or trial, it would have ſuſpended the operations of the whole fleet, and would have ſuſpended them in the midſt of the campaign, when every moment was precious, and the exertion of every officer neceſſary. The delay which the preſent Court Martial has occaſioned to the ſervice, even at this time, is evident to all the world—how much more miſchievous would it have been at that period! I was ſenſible of it, or rather to ſpeak more correctly, my mind was ſo fully taken up with carrying on the great ſervice which was entruſted to my care, that I could not admit the thought of miſpending my own time, and waſting the flower of the Britiſh navy, in attending on a Court Martial.

My letter to the Admiralty was written in the ſpirit which directed my conduct at Plymouth. All my letters were written with the ſame ſpirit. My letter publiſhed in the Gazette has been brought before this Court for the purpoſe of convicting me of crimes, by the perſon whoſe faults it was intended to cover. He has attempted, very irregularly in my opinion, to call upon witneſſes for their conſtruction of my writing. No one has a right to explain my meaning, where it may be doubtful, but myſelf; and it is you, Gentlemen, who are to judge whether my explanation is fair.

That letter (as far as it goes) is an account of the action, ſtrictly true. It is indeed very ſhort, and very general, but it goes as far as I intended it ſhould. It commends Sir Hugh Palliſer, it does what I meant to do.

I meant to commend his bravery (or what appeared to me as ſuch) in the engagement. As he ſtood high in command, to paſs over one in his ſtation would be to mark him. It would have conveyed the cenſure I wiſhed for ſuch good reaſons to avoid, and I ſhould have defeated the one great object I had in view, the defence of the nation. In that letter I expreſſed alſo my hopes of my bringing the French fleet to action in the morning.

I had

I had ſuch hopes; and my accuſer, even in the ſecond edition of his log-book, ſhews that I was not wholly ungrounded in my expectations; ſince he has recorded himſelf as of the ſame opinion. I ſaid that I did not interrupt the French fleet that evening in the formation of their line. I ſhall ſhew you by evidence (if it ſhould not have already fully appeared) that I was not able to do it; and that any random firing from me, under my circumſtances, would have been vain againſt the enemy, and a diſgraceful trifling with regard to myſelf.

You have ſeen my expreſſions, and ſuch is their meaning, with regard both to the French and Sir Hugh Palliſer, ſo far as they applied to the particular times to which they ſeverally belonged. But there was an *intermediate time* with regard to both, of which, when I wrote my letter, I gave no account. I intended to conceal it. I do not conceive that a Commander in Chief is bound to diſcloſe to all Europe, in the midſt of a critical ſervice, the real ſtate of his fleet, or his opinion of any of his officers.

He is not, under ſuch circumſtances, bound to accuſe a Britiſh Admiral. To me ſuch an accuſation, under almoſt any circumſtances, is a very ſerious matter; whilſt a poſſibility of an excuſe for an officer remains in my mind, I am, in my diſpoſition, ready to lay hold of it; and I confeſs to you, that until Sir Hugh Palliſer himſelf had brought out to this Court all the particulars, I attributed much more to his misfortune or miſtake, than I now find myſelf authorized to do; nor did I think his conduct half ſo exceptionable as he himſelf has proved it.

After the engagement, *he* never thought fit to explain to me the reaſons of his not bearing down into my wake to enable me to renew the action, and *I* did not think fit to enquire into them.

I apprehend that a power of paſſing over faults or miſtakes in ſervice, (into which the very beſt officers may be ſurprized) to be ſometimes as neceſſary, if not to diſcipline, yet to the end of all diſcipline, the good of the ſervice, as any puniſhment of them can poſſibly be: and one of the ill effects of this proſecution will be, I fear, to terrify a Commander in Chief out of one of the moſt valuable parts of his diſcretion.

By uſing the diſcretion which I thought was in me, I preſerved concord in the fleet, promptitude in the ſervice, and dignity to the country. In my opinion, any complaint of ſuch a magnitude, would have produced infinite miſchiefs.

Nobody

Nobody can imagine that in that moment an accuſation of a Vice-Admiral, who was beſides a Lord of the Admiralty, could be undertaken without a capital detriment to our naval operations, and even to the quiet of the public.

My letter was written ſolely upon the principles which I have now honeſtly and faithfully laid before you, and which I ſubmit to your judgment. If I have been more indulgent than was wiſe, the public has had the benefit, and all the trouble and inconvenience of my indiſcretion has fallen upon myſelf. I never had a more troubleſome taſk of the ſort, than in penning that letter, and it has ill anſwered my pains.

If I have not ſhewn myſelf able at concealment, it is a fault for which I hope I ſhall not loſe much credit with this Court Martial; I ſhall not be very uneaſy, if I have been thought to have wrote a bad letter, if I ſhall be found, as I truſt I ſhall be found, to have done my duty in fighting the enemy.

The intruſion of my letter into the trial, has made it neceſſary for me to explain it. I now proceed with the account of my conduct.

I got ready for ſea again, with my uſual temper and diſpoſition to accommodate; after this I kept the ſea as long as I could. The French fleet carefully avoided my ſtation. I could obtain no diſtinct intelligence of them, though I omitted no means to procure it.

In conſequence of this, their deſertion of the ſeas, their trade fell into the hands of our privateers, to a number and value, that I believe was never equalled in the ſame ſpace of time. His Majeſty was pleaſed to ſpeak of it in his ſpeech from the throne, and to attribute it to the good conduct of ſome of his officers.

When I conſidered this, when I conſidered the direct approbation of my conduct, and the circumſtances which attended my appointment, it was with difficulty I perſuaded myſelf that I was awake, when I found that I was treated as a criminal, and ordered, without the leaſt ceremony or previous enquiry, to be tried by a Court Martial; on the accuſation of my officer, my old friend, one over whoſe faults I had ſo lately caſt a veil, the very perſon who was the meſſenger and congratulator of my original appointment. I acknowledge it was for ſome time before I could ſufficiently maſter my indignation, and compoſe myſelf to that equality of temper with which I came hither, and with which I have heard ſuch ſhocking and reproachful matter and words read to my face,

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in the place of ſupport I was made to look for. I feel very much inward peace at preſent, and the event I conſider with much leſs concern for myſelf than for the ſervice. Your judgement I am fully perſwaded will be wiſe and well weighed, and ſuch as will be of credit to yourſelves, and of advantage and encouragement to that part of the military which is moſt intereſting to this kingdom. On my part, I truſt, I ſhall intitle myſelf not only to an acquittal, but to an honorable reparation at your hands for the malicious calumnies contained in the charge againſt me.

Thus much I have ſaid as to the general matter which has ariſen on the trial, and the circumſtances by which that trial has beeen brought on, as well as to the motives and principles which regulated the diſcretion that I conceive was in me. If theſe motives were probable, and likely to be real, I cannot be guilty of the criminal negligence and want of knowledge in my profeſſion, with which I ſtand charged. As to the charges themſelves, let the firſt articles be read again, and I will anſwer to it.

JUDGE ADVOCATE. *Firſt Article of the Charge.*

" That on the morning of the 27th July, 1778, having a " fleet of thirty ſhips of the line under his command, and being " then in the preſence of a French fleet of the like number " of ſhips of the line, the ſaid Admiral did not make the " neceſſary preparations for fight, did not put his fleet into " a line of battle, or into any order proper either for re- " ceiving or attacking an enemy of ſuch force: but on the " contrary, although his fleet was already diſperſed and in " diſorder, he, by making the ſignal for ſeveral ſhips of the " Vice-Admiral of the Blue's diviſion to chace to windward, " increaſed the diſorder of that part of his fleet, and the " ſhips were in conſequence more ſcattered than they had " been before, and whilſt in this diſorder he advanced to the " enemy and made the ſignal for battle."

" That the above conduct was the more unaccountable, " as the enemy's fleet was not then in diſorder, nor beaten, " nor flying, but formed in a regular line of battle on that " tack which approached the Britiſh fleet, (all their motions " plainly indicating a deſign to give battle) and they edged " down and attacked it whilſt in diſorder: by this un-officer- " like conduct a general engagement was not brought on,

" but

" but the other flag Officers and Captains were left to engage " without order or regularity, from whence great confuſion " enſued, ſome of his ſhips were prevented getting into " action at all, others were not near enough to the enemy, " and ſome from the confuſion fired into others of the King's " ſhips, and did them conſiderable damage, and the Vice- " Admiral of the Blue was left alone to engage ſingly and " unſupported. In theſe inſtances the ſaid Admiral Kep- " pel negligently performed the duty impoſed on him."

Anſwer to the Firſt Article of the Charge.

The firſt of the Charges contained in the firſt article, is,

" That on the morning of the 27th of July, 1778, having " a fleet of thirty ſhips of the line under my command, and " being then in the preſence of a French fleet of the like " number of ſhips of the line, I did not make the neceſſary " preparations for fight."

To this I anſwer, that I have never underſtood preparations for fight to have any other meaning in the language and underſtanding of ſeamen than that each particular ſhip under the direction and diſcipline of her own officers *when in purſuit of an enemy*, be in every reſpect cleared and in readineſs for action; the contrary of which, no Admiral of a fleet without reaſonable cauſe will preſume, *and as from the morning of the 24th, when the French fleet had got to windward, to the time of the action, the Britiſh fleet was in unremitting purſuit of them*, it is ſtill more difficult to conceive that any thing more is meant by this charge, than what is immediately after conveyed by the charge that follows it, namely,

" That on the ſame morning of the 27th I did not put " my fleet into a line of battle, or into any order, proper " either for receiving or attacking an enemy of ſuch force."

By this ſecond part of the charge I feel myſelf attacked in the exerciſe of that great and broad line of diſcretion, which every officer commanding either fleets or armies is often obliged both in duty and conſcience to exerciſe to the beſt of his judgement, and which depending on circumſtances and ſituations infinitely various, cannot be reduced to any poſitive rule of diſcipline or practice! a diſcretion which I will ſubmit to the court, I was peculiarly called upon by the ſtrongeſt and beſt motives to exerciſe, and which in my public letter to the Board of Admiralty I openly avowed to have exerciſed. I admit that on the morning of the

27th of July I did not put my fleet into a line of battle; becauſe I had it not in my choice to do ſo, conſiſtent with the certainty, or even the probability of either giving, or being given battle, and becauſe if I had ſcrupulouſly adhered to that order, in which if the election had been mine I ſhould have choſen to have received or attacked a willing enemy, I ſhould have had no enemy either to receive or to attack.

I ſhall therefore, in anſwer to this charge, ſubmit to the Court my reaſons for determining to bring the French fleet to battle at all events, and ſhall ſhew that any other order than that in which my fleet was conducted, from my firſt ſeeing them, to the moment of the action was incompatible with ſuch determination.

And in order to this, I muſt call the attention of the Court, to a retroſpective view of the motions of the two fleets, from their firſt coming in ſight of each other.

On my firſt diſcovering the French fleet at one o'clock in the afternoon of the 23d of July, I made the neceſſary ſignals for forming my fleet in the order of battle, which I effected towards the evening, when I brought to, by ſignal, and lay till the morning, when perceiving that the French fleet had gained the wind during the night, and carried a preſſed ſail to preſerve it, I diſcontinued the ſignal for the line, and made the general ſignal to chace to windward, in hopes that they would join battle with me, rather than ſuffer two of their capital ſhips to be entirely ſeparated from them, and give me the chance of cutting off a third, which had carried away a topmaſt in the night, and which but for a ſhift of wind I muſt have taken. In this, however, I was diſappointed, for they ſuffered two of them to go off altogether, and continued to make every uſe of the advantage of the wind.

This aſſiduous endeavour of the French Admiral to avoid coming to action, which from his thus having the wind was always in his option, led me to believe, he expected a reinforcement—a reflection which would alone, have been a ſufficient to determine me to urge my purſuit in as collected a body as the nature of ſuch a purſuit would admit of, without the delay of the line, and to ſeize the firſt opportunity of bringing on an engagement.

But I had other reaſons no leſs urgent.

If by obſtinately adhering to the line of battle, I had ſuffered, as I inevitably muſt, the French fleet to have ſeparated from me, and if by ſuch ſeparation the Engliſh convoys

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from the Eaſt and Weſt Indies, which I have already ſtated in the introduction to my defence to have been then expected home, had been cut off, or the coaſt of England had been inſulted, what would have been my ſituation? Sheltered under the forms of diſcipline, I perhaps, might have eſcaped puniſhment, but I could not have eſcaped cenſure. I ſhould neither have eſcaped the contempt of my fellow citizens, nor the reproaches of my own conſcience.

Moved by theſe important conſiderations, ſupported by the examples of Admiral Ruſſel, and other great Naval Commanders, who in ſimilar ſituations had ever made ſtrict order give way to reaſonable enterprize, and particularly encouraged by the remembrance of having myſelf ſerved under that truly great Officer Lord Hawke, when rejecting all rules and forms, he graſped at victory by an irregular attack; I determined not to loſe ſight of the French fleet by being outſailed from preſerving the line of battle, but to keep my fleet as well collected as I could, and near enough to aſſiſt and act with each other, in caſe a change of wind, or other favourable circumſtance, ſhould enable me to force the enemy to action.

Such were my feelings and reſolutions when the day broke on the morning of the 27th of July, at which time the fleet under my command, was in the following poſition—Vice-Admiral Sir Robert Harland was about four miles diſtant on the Victory's weather quarter, with moſt of the ſhips of his own diviſion, and ſome of thoſe belonging to the center,—and Vice-Admiral Sir Hugh Palliſer at about three miles diſtance, a point before the lee beam of the Victory, with his mainſail up, which obliged the ſhips of his diviſion to continue under an eaſy ſail.

The French fleet was as much to windward, and at as great a diſtance as it had been the preceding morning, ſtanding with a freſh wind cloſe hauled on the larboard tack, to all appearance avoiding me with the ſame induſtry as ever.

At this time, therefore, I had no greater inducement to form the line than I had on the morning of the former day, and I could not have formed it without greatly increaſing my diſtance from the French fleet, contrary to that plan of operation which I have already ſubmitted to the judgement of the Court.

The Vice-Admiral of the Blue next charges:

"That although my fleet was already diſperſed, and in "diſorder, I, by making the ſignal for ſeveral ſhips of his "diviſion to chace to windward, encreaſed the diſorder of

" that part of my fleet, and that the ſhips were in conſequence " more ſcattered than they had been before, and that whilſt " in this diſorder, I advanced to the enemy, and made the " ſignal for battle."

In this part of the charge, there is a ſtudious deſign to miſlead the underſtanding, and by leaving out times, and intermediate events, to make the tranſactions of half a day appear but as one moment.

It is indeed impoſſible to read it without being poſſeſſed with the idea, that at half paſt five in the morning, when I made the ſignal for ſix of the ſhips of the Vice-Admiral's of the Blue's diviſion to chace to windward, I was in the immediate proſpect of cloſing with an enemy approaching me in a regular line, and all their motions plainly indicating a deſign to give battle; inſtead of which, both the fleets were then on the larboard tack, the enemy's fleet near three leagues to windward, going off cloſe by the wind with a preſſed ſail. My reaſon, therefore, for making that ſignal at half paſt five, was to collect as many of the ſhips to windward as I could, in order to ſtrengthen the main body of the fleet, in caſe I ſhould be able to get to action, and to fill up the interval between the Victory and the Vice-Admiral, which was occaſioned by his being far to leeward; and it is plain that the Vice-Admiral muſt have himſelf underſtood the object of the ſignal, ſince it has appeared in the courſe of the evidence, that on its being made, the Formidable ſet her mainſail, and let the reefs out of her topſails: and indeed the only reaſon why it was not originally made for the whole diviſion, was, that they muſt have then chaced as a diviſion, which would have retarded the beſt-going ſhips, by an attendance on the Vice-Admiral.

Things were in this ſituation, when about nine o'clock the French fleet *wore* and ſtood to the ſouthward on the ſtarboard tack, but the wind immediately after they were about, coming more ſoutherly, I continued to ſtand on till a quarter paſt ten, at which time I tacked the Britiſh fleet together by ſignal, and ſoon after we were about, the wind came ſome points in our favor to the weſtward, which enabled us to lye up for a part of them: but in a dark ſquall that almoſt immediately came on, I loſt ſight of them for above half an hour, and when it cleared away at eleven o'clock, I diſcovered that the French fleet had changed their poſition, and were endeavouring to form the line on the larboard tack, which finding they could not effect without coming within gun-ſhot of the van of the Britiſh fleet, they edged down and fired on my headmoſt ſhips,

as

as they approached them on the contrary tack, at a quarter after eleven, which was inſtantly returned; *and then, and not till then, I made the ſignal for battle. All this happened in about half an hour*, and muſt have been owing to the enemy's falling to leeward in performing their evolution during the ſquall, which we could not ſee, and by that means produced this ſudden and unexpected opportunity of engaging them, as they were near three leagues a-head of me when the ſquall came on.

If, therefore, by making the ſignal for the line of battle, when the van of my fleet was thus ſuddenly getting within reach of the enemy, and well connected with the center, as my accuſer himſelf has admitted, I had called back the Vice-Admiral of the Red, the French fleet might either have formed their line compleat, and have come down upon my fleet while in the confuſion of getting into order of battle, or (what I had ſtill greater reaſon to apprehend) might have gone off to windward out of my reach altogether; for even as it was, the enemy's van, inſtead of coming cloſe to action, kept their wind, and paſſed hardly within random ſhot.

My accuſer next aſſerts, as an aggravation of his former charge:

"That the French fleet was in a regular line, on the tack "which approached the Britiſh fleet, all their motions plainly "indicating a deſign to give battle."

Both which facts have already been contradicted by the teſtimony of even his own witneſſes; that the enemy's fleet was not in a regular line of battle, appeared by the French Admiral being out of his ſtation, far from the center of his line, and next, or very near to a ſhip carrying a Vice-Admiral's flag, and from ſome of their ſhips being a-breaſt of each other, and in *one*, as they paſſed the Engliſh fleet, with other apparent marks of irregularity. Indeed, every motion of the French fleet, from about nine, when it went on the ſtarboard tack, till the moment of the action, and even during the action itſelf, I apprehend to be deciſive againſt the alledged indication of deſigning battle. For, if the French Admiral had really deſigned to come to action, I apprehend he never would have got his fleet on the contrary tack to that on which the Britiſh fleet was coming up to him, but would have ſhortened ſail and waited for it, formed in the line on the ſame tack. And even when he did tack towards the Britiſh fleet, the alledged indication is again directly refuted, by the van of the French fleet hauling their wind again, inſtead

ſtead of bearing down into action, and by their hoiſting no colours when they began to engage.

Notwithſtanding theſe incontrovertible truths, my accuſer imputes it to me that a general engagement, was not brought on; but it is evident from the teſtimony of every witneſs he has called, that a general engagement was never in my choice, and that ſo far from its being prevented by my not having formed the line of battle, no engagement, either general or partial, could have been brought on, if I had formed it. Indeed, it is a contradiction in terms, to ſpeak of a general engagement, where the fleet that has the wind, tacks to paſs the fleet to leeward on the contrary tack.

Such was the manner in which, after four days purſuit, I was at laſt enabled, by a favourable ſhift of wind, to cloſe with the fleet of France.

And if I am juſtifiable on principle in the exerciſe of that diſcretion, which I have been ſubmitting to your judgment, of bringing at all events an unwilling enemy to battle, I am certainly not called upon to deſcend to all the minutiæ of conſequences reſulting from ſuch enterprize, even if ſuch had enſued as my accuſer has aſſerted, but which his own witneſſes have not only failed to eſtabliſh, but abſolutely refuted. It would be an inſult on the underſtanding of the Court, were I to offer any arguments to ſhew, that ſhips which engage without a line of battle, cannot ſo cloſely, uniformly, and mutually ſupport each other, as when circumſtances admit of a line being formed, becauſe it is ſelf evident, and is the baſis of all the diſcipline and practice of lines of battle. But, in the preſent caſe, notwithſtanding I had no choice in making any diſpoſition for an attack, nor any poſſibility of getting to battle otherwiſe than I did, which would be alone ſufficient to repel any charge of conſequent irregularity or even confuſion, yet it is not neceſſary for me to claim the protection of the circumſtances under which I acted; becauſe no irregularity or confuſion either exiſted or has been proved, all the chacing ſhips, and the whole fleet, except a ſhip or two, got into battle, and into as cloſe battle as the French fleet, which had the option by being to windward choſe to give them.

The Vice-Admiral of the Blue himſelf, though in the rear, was out of action in a ſhort time after the Victory, and ſo far from being left to engage ſingly, and unſupported, was paſſed during the action, by three ſhips of his own diviſion, and was obliged to back his mizen-topſail to keep out of the fire

of

of one of the largeſt ſhips in the fleet, which muſt have continued near him all the reſt of the time he was paſſing the French line, as I ſhall prove ſhe was within three cable's length of the Formidable when the firing ceaſed.

Second Article of the Charge.

" That after the van and center diviſions of the Britiſh " fleet paſſed the rear of the enemy, the Admiral did not " immediately tack and double upon the enemy with thoſe " two diviſions, and continue the battle, nor did he collect " them together at that time, and keep ſo near the enemy " as to be in readineſs to renew the battle, as ſoon as it " might be proper; but on the contrary, he ſtood away " beyond the enemy to a great diſtance before he wore to " ſtand towards them again, leaving the Vice-Admiral of " the Blue engaged with the enemy, and expoſed to be cut " off."

Anſwer to the Second Article.

The moment the Victory had paſſed the enemies rear, my firſt object was to look round to the poſition of the fleet, which the ſmoke had till then obſcured from obſervation, in order to determine how a general engagement might beſt be brought on after the fleets ſhould have paſſed each other.

I found that the Vice-Admiral of the Red with part of his diviſion had tacked, and was ſtanding towards the enemy with top-gallant ſails ſet, the very thing I am charged with not having directed him to do; but all the reſt of the ſhips that had got out of action were ſtill on the ſtarboard tack, ſome of them dropping to leeward, and ſeemingly employed in repairing their damages: the Victory herſelf was in no condition to tack, and I could not immediately wear and ſtand back on the ſhips coming up a ſtern of me out of the action (had it been otherwiſe expedient) without throwing them into the utmoſt confuſion. Sir John Roſs, who very gallantly tried the experiment, having informed the Court of the momentary neceſſity he was under of wearing back again to prevent the conſequences I have mentioned, makes it unneceſſary to enlarge on the probable effect of ſuch a general manœuvre with all the ſhips a-head.—Indeed, I only remark

remark it as a ſtrong relative circumſtance, appearing by the evidence of a very able and experienced officer, and by no means as a juſtification for having ſtood away to a great diſtance beyond the enemy before I wore, becauſe the charge itſelf is groſsly falſe in fact.

The Victory had very little way while her head was to the ſouthward, and although her damages were conſiderable, was the firſt ſhip of the center diviſion that got round towards the enemy again, and ſome time before the reſt were able to follow her; ſince, even as it was, not above three or four were able to cloſe up with her on the larboard tack; ſo that had it even been practicable to have wore ſooner than I did, no good purpoſe could have been anſwered by it: ſince I muſt only have wore the ſooner back again, to have collected the diſabled ſhips, which would have been thereby left ſtill farther a-ſtern.

The Formidable was no otherwiſe left engaged with the enemy during this ſhort interval, than as being in the rear, which muſt always neceſſarily happen to ſhips in that ſituation, when fleets engage each other on contrary tacks; and no one witneſs has attempted to ſpeak to the danger my accuſer complains of, except his own Captain, who, on being called upon to fix the time when ſuch danger was apprehended, ſtated it to be before the Formidable opened her fire, which renders the application of it as a conſequence of the ſecond Charge, too abſurd to demand a refutation.

Third Article of the Charge.

"That after the Vice-Admiral of the Blue had paſſed the "laſt of the enemy's ſhips and immediately wore, and laid "his own ſhip's head towards the enemy again, being then "in their wake, and at a little diſtance only, and expecting "the Admiral to advance with all the ſhips to renew the "fight — the Admiral did not advance for that purpoſe, but "ſhortened ſail, hauled down the ſignal for battle; nor did "he at that time, or at any other time whilſt ſtanding to- "wards the enemy, call the ſhips together in order to renew "the attack, as he might have done, particularly the Vice- "Admiral of the Red and his diviſion, which had received "the leaſt damage, had been the longeſt out of action, were "ready and fit to renew it, were then to windward, and "could have bore down and fetched any part of the French "fleet, if the ſignal for battle had not been hauled down, or

"if

" if the ſaid Admiral Keppel had availed himſelf of the ſignal " appointed by the thirty-firſt Article of the Fighting In- " ſtructions, by which he might have ordered thoſe to lead, " who are to lead with the ſtarboard tacks on board by a " wind, which ſignal was applicable to the occaſion, for re- " newing the engagement with advantage, after the French " fleet had been beaten, their line broken and in diſorder. " In theſe inſtances he did not do the utmoſt in his power to " take, ſink, burn, or deſtroy the French fleet, that had at- " tacked the Britiſh fleet."

Anſwer to the Third Article.

As ſoon as I had wore to ſtand towards the enemy, I hauled down the ſignal for battle, which I judged improper to be kept abroad till the ſhips could recover their ſtations, or at leaſt get near enough to ſupport each other in action; and in order to call them together for that purpoſe, I immediately made the ſignal to form the line of battle a-head, a cable's length aſunder, and the Victory being at this time a-head of all the center and Red diviſion, I embraced that opportunity of unbending her main-topſail, which was totally unſerviceable, and in doing which the utmoſt expedition was uſed, the ſhips a-ſtern of me doing all they could in the mean time to get into their ſtations, ſo that no time was loſt by this neceſſary operation.

The Formidable was a-head of the Victory during this period, it was her ſtation in the line on that tack, yet at the very moment my accuſer dares to charge me with not calling the ſhips together to renew the attack—he himſelf, though his ſhip was in a manageable condition, as has appeared by the evidence of his own Captain; and though he had wore, expecting, as he ſays, the battle to be renewed, quitted his ſtation in the front of that line of battle, the ſignal for which was flying, paſſed to leeward of me on the ſtarboard tack while I was advancing to the enemy, and never came into the line during the reſt of the day.

In this ſituation I judged it neceſſary, that the Vice-Admiral of the Red, who was to windward, and puſhing forward on my weather-bow with ſix or ſeven ſhips of his diviſion, ſhould lead on the larboard tack, in order to give time to the ſhips which had come laſt out of action, to repair their damages, and get collected together; and the ſignal appointed

by the thirty-firſt Article of the Fighting Inſtructions not being applicable, as the French fleet was ſo nearly a-head of us, that by keeping cloſe to the wind we could only have fetched them, I made the Proſerpine's ſignal, in order to have diſpatched Captain Sutton with a meſſage to Vice-Admiral Sir Robert Harland, to lead the fleet on the larboard tack—but before he had left the Victory with the orders he had received, the French fleet wore and ſtood to the ſouthward, forming their line on the ſtarboard tack, their ſhips advancing regularly out of a collected body, which they had got into from the operation of wearing, and not from any diſorder or confuſion; though had ſuch diſorder or confuſion really exiſted, I could have derived no immediate advantage from it, not having a ſufficient force collected to prevent their forming by an attempt to renew the attack. The Victory was at this time the neareſt ſhip to the enemy, with no more than three or four of the center diviſion in any ſituation to have ſupported her, or each other in action. The Vice-Admiral of the Blue was on the ſtarboard tack, ſtanding away from his ſtation, totally regardleſs of the ſignal that was flying to form the line; and moſt of the other ſhips, except the Red diviſion, whoſe poſition I have already ſtated, were far a-ſtern, and five diſabled ſhips at a great diſtance on the lee quarter.

Moſt of theſe facts are already eſtabliſhed by my accuſer's own evidence, and I ſhall prove and confirm them all by the teſtimony of that part of the fleet, whoſe ſituations will enable them to ſpeak to them with certainty.

I truſt they will convince the Court, that I had it not in my power to collect the fleet together to renew the fight at that time, and that from their not being able to follow me, I conſequently could not advance with them:—that I did not ſhorten ſail, but only ſhifted an unſerviceable one, when I was far a-head and the ſhips unable to follow—that I did not haul down the ſignal for battle till it ceaſed to be capable of producing any good effect—that during the whole time I ſtood towards the enemy, I endeavoured by the moſt forcible of all ſignals, the ſignal for the line of battle to call the ſhips together, in order to renew the attack—that I did avail myſelf of the ſhips that were with the Vice-Admiral of the Red, as far as circumſtances admitted—and that I therefore did do the utmoſt in my power to take, ſink, burn, and deſtroy the French fleet, which had attacked the Britiſh fleet.

Fourth

Fourth Article of the Charge.

" That, inſtead of advancing to renew the engagement as " in the preceeding articles is alledged, and as he might and " ought to have done, the Admiral wore and made ſail di- " rectly from the enemy, and thus he led the whole Britiſh " fleet away from them, which gave them the opportunity to " rally unmoleſted, and to form again into a line of battle and " to ſtand after the Britiſh fleet.

" This was diſgraceful to the Britiſh flag; for it had the " appearance of a flight, and gave the French Admiral a pre- " tence to claim the victory, and to publiſh to the world that " the Britiſh fleet ran away, and, that he purſued it with the " fleet of France, and offered it battle.

Anſwer to the Fourth Article.

The French fleet having wore, and began to form their line on the ſtarboard tack by the wind, which if they had kept would have brought them cloſe up with the center diviſion; ſoon afterwards edged away, pointing towards four or five of the diſabled ſhips, which were at a diſtance to leeward, and with evident intention to have ſeparated them from the reſt of the fleet; to prevent which, I made the ſignal to wear, and ſtood athwart their van in a diagonal courſe, to give protection to theſe crippled ſhips, keeping the ſignal for the line flying to form and collect the fleet on the ſtarboard tack: and as I had thus been obliged to alter my diſpoſition before Captain Sutton left the Victory with my former meſſage, I diſpatched him with orders to the Vice-Admiral of the Red, to form with his diviſion at a diſtance a-ſtern of the Victory, to cover the rear, and to keep the enemy in check 'till the Vice-Admiral of the Blue ſhould come into his ſtation with his diviſion in obedience to the ſignal. Theſe orders the Vice-Admiral of the Red inſtantly obeyed, and was formed in my wake before four o'clock, when finding that while by the courſe I ſteered to protect the crippled ſhips, I was nearing the enemy, the Vice-Admiral of the Blue ſtill continued to lie to windward, and by ſo doing kept his diviſion from joining me, I made the ſignal for ſhips to windward to bear down into my wake; and that it might be the better diſtinguiſhed (both being ſignals at the mizen peak) I hauled down the ſignal for the line for about ten minutes, and then hoiſted it again. This ſignal for ſhips to windward to bear down he

repeated, though he had not repeated that for the line of battle; but by not bearing down himſelf, he led the ſhips of his diviſion to interpret his repeating it as requiring them to come into his wake inſtead of mine.

Having now accompliſhed the protection of the diſabled ſhips, and the French fleet continuing to form their line, ranging up to leeward paralled to the center diviſion, my only object was to form mine, in order to bear down upon them to renew the battle: and therefore at a quarter before five, after having repeated the ſignal for ſhips to windward to bear down into my wake with no better effect than before, I ſent the Milford, with orders to the Vice-Admiral of the Red to ſtretch a-head and take his ſtation in the line, which he inſtantly obeyed, and the Vice-Admiral of the Blue being ſtill to windward with his fore topſail unbent, and making no viſible effort to obey the ſignal, which had been flying the whole afternoon, I ſent the Fox at five o'clock with orders to him to bear down into my wake, and to tell him that I only waited for him and his diviſion to renew the battle; and while I was diſpatching theſe frigates, having before hauled down the ſignal to come into my wake, I put abroad the ſignal for all ſhips to come into their ſtations, always keeping the ſignal for the line flying. All this producing no effect on the Vice-Admiral of the Blue, and wearied out with fruitleſs expectation, at ſeven o'clock I made the ſignal for each particular ſhip of the Vice-Admiral of the Blue's diviſion to come into her ſtation; but before they had accompliſhed it, night put an end to all further operations.

It may be obſerved that amongſt theſe ſignals I did not make the Formidable's—if the Vice-Admiral choſes to conſider this as a culpable neglect, I can only ſay that it occurred to me, to treat him with a delicacy due to his rank, which had ſome time before induced me to ſend him the meſſage by Capt. Windſor; the particulars of which he has already faithfully related to the Court.

I truſt I have little reaſon to apprehend that you will be inclined to conſider my conduct as I have ſtated it, in anſwer to this fourth Article of the charge, as diſgraceful to the Britiſh flag! After I had wore upon the ſame tack with the enemy, to protect the diſabled part of my fleet, and to collect the reſt together, there would have been little to do to renew the battle, but bearing right down upon the enemy, if my accuſer had led down his diviſion in obedience to the repeated ſignals

nals and orders which I have ſtated. The Victory never went more than two knots, was under her double reefed topſails and foreſail, much ſhattered, which kept the ſhips that were near her, under their topſails, and ſuffered the French fleet, which might always have brought me to action, if they had inclined to do it, to range up parallel with the center under very little ſail: and it was to protect the five diſabled ſhips above-mentioned, and to give the reſt time to form into ſome order, that I judged it more expedient to ſtand as I did, under that eaſy ſail, than to bring to, with my head to the ſouthward. The Court will judge whether it was poſſible for any officer in the ſervice really to believe that theſe operations could give the appearance of a flight, or furniſh a rational pretence to the French Admiral to claim the victory, or publiſh to the world that the Britiſh fleet had run away.

Fifth Article of the Charge.

"That on the morning of the 28th of July, 1778, when "it was perceived that only three of the French fleet re- "mained near the Britiſh in the ſituation the whole had "been in the night before, and that the reſt were to lee- "ward at a greater diſtance, not in a line of battle, but in "a heap, the Admiral did not cauſe the fleet to purſue the "flying enemy, nor even to chace the three ſhips that fled "after the reſt; but on the contrary, he led the Britiſh "fleet another way directly from the enemy.

"By theſe inſtances of miſconduct and neglect, a glorious "opportunity was loſt of doing a moſt eſſential ſervice to "the State, and the honour of the Britiſh Navy was tar- "niſhed."

Anſwer to the Fifth Article.

On the morning of the 28th of July, the French fleet (except three ſail, which were ſeen on the lee quarter) was only viſible from the maſt heads of ſome of the ſhips of the Britiſh fleet, and at a diſtance from me, which afforded not the ſmalleſt proſpect of coming up with them, more eſpecially, as their ſhips, though certainly much damaged in their hulls, had not apparently ſuffered much in their maſts and ſails; whereas the fleet under my command, was generally, and greatly ſhattered in their maſts, yards, and rigging,

ging, and many of them unable to carry ſail; as to the three French ſhips, I made the ſignal at five o'clock in the morning, for the Duke, Bienfaiſant, Prince George, and Elizabeth, to give them chace, judging them to be the propereſt ſhips for that purpoſe, but the two laſt were not able to carry ſufficient ſail to give even countenance to the purſuit, and looking round to the general condition of my fleet, I ſaw it was in vain to attempt either a general or a partial chace. Indeed my accuſer does not venture to alledge that there was any probability, or even poſſibility, of doing it with effect, which deſtroys the whole imputation of his charge.

Under theſe circumſtances I truſt I could not miſtake my duty, and I was reſolved, as I have already before obſerved, in the introduction to my defence, not to ſacrifice it to an empty ſhow and appearance, which is beneath the dignity of an officer, unconſcious of any failure or neglect. To have urged a fruitleſs purſuit with a fleet ſo greatly crippled in its maſts and ſails, after a diſtant and flying enemy, within reach of their own ports, and with a freſh wind blowing fair for their port, with a large ſwell, would have been not only wantonly expoſing the Britiſh fleet under my command without end or object, but miſleading and defeating its operations, by delaying the refitment neceſſary for carrying on the future ſervice with vigour and effect.

My accuſer aſſerts, by a general concluſion to the five Articles exhibited againſt me, that from what he ſtates as inſtances of miſconduct and neglect in me, a glorious opportunity was loſt of doing a moſt eſſential ſervice to the ſtate, and that the honour of the Britiſh navy was tarniſhed.

The truth of the aſſertion, that an opportunity was loſt, I am not called upon either to combat or deny: it is ſufficient for me, if I ſhall be ſucceſsful in proving, that that opportunity was ſeized by me, and followed up to the full extent of my power. If the Court ſhall be of that opinion I am ſatisfied, and it will then reſt with the Vice-Admiral of the Blue, to explain to what cauſe it is to be referred, that the glorious opportunity he ſpeaks of, was loſt, and to whom it is to be imputed (if the fact be true) that the Honour of the Britiſh Navy has been tarniſhed.

Having now offered to the Court preciſe anſwers to all the charges exhibited againſt me, I ſhall proceed to call my witneſſes to ſupport thoſe anſwers, and of courſe to refute the charges

charges in the order in which they have been made——I ſhall call them not as a priſoner commonly calls his witneſſes, to oppoſe them to thoſe which appear for the proſecution. Quite the contrary——I bring them to ſupport, confirm, enlarge, and illuſtrate almoſt the body of the evidence, which has been given by my accuſer.

But, before I ſit down, I muſt diſcharge a duty which I feel myſelf to owe to the reputation of a ſervice highly and juſtly favoured in this country, and which can never ſuffer in its honor, but the nation itſelf will ſuffer in proportion.

I have heard it aſſerted, and contended for, during this trial, as an eſſential, and indiſpenſable right of a Captain of a man of war, to make additions and alterations in the ſhip's log-book, even after the original entries had been ſeen, examined, and approved by himſelf—I have ſeen this attempted to be excuſed, nay, even juſtified and boaſted of, in a caſe where the alterations and additions introduced matter of criminal and capital offence: acknowledged by the party to have been introduced months after the original entries were inſerted—and with knowledge that a criminal charge had then been exhibited againſt the perſon in whoſe trial they were firſt heard of. I have heard this attempted to be defended, where the moſt material of the alterations and additions were certainly not ſupported by fact.

Upon this occaſion, ſurely, I am called upon to enter my proteſt againſt a claim which ſubjects the log-books of the King's ſhips, that ought to contain, if not always a perfect, yet always a genuine narrative of their tranſactions, when the events are freſh and recent, when they cannot be miſtaken, and can hardly be miſrepreſented, and which ought never to be altered after the entries have been made and authoriſed.

This is the caſe of the firſt alteration of the log-book. Another alteration has ſince appeared in another log-book! that of the Proſecutor himſelf! little differing from the former, except, that the perſon that has actually made it, does not appear to juſtify it—that the witneſs to it ſtates it to have been made ſoon after the engagement, and that the deſtruction of ſome leaves, and ſubſtitution of others, ſeems to be rather made for the purpoſe of exculpating another perſon, than of criminating me. But whatever the intention was, the thing is equally unjuſtifiable in all reſpects. It tends equally to deſtroy

ſtroy all ſorts of uſe in theſe kind of records; and to render them highly fallacious, and poſſibly highly dangerous. I do not dwell on all the particulars of that unhappy buſineſs!—It is painful to me, and the nature of the tranſaction is but *too* viſible. There has always been, and probably will always be, ſomething ſlovenly in theſe books; and the Maſters have thought they have more power over them than is proper.

There is, however, a great difference between inaccuracy and malicious deſign. There is a difference between the correction or ſupply of indifferent matters, and the cancelling of pages, and putting in others—omitting, adding to, and varying the moſt important things, for the moſt important purpoſes.

It is alſo proper for me to ſtate two or three facts to the Court, in order to place the conduct of my accuſer in its proper point of view.

I admit that the charges he has exhibited againſt me are very heinous. They expreſs miſconduct and negligence; they imply (and ſo the Court has underſtood them to imply) cowardice alſo. If I ever committed them at all, it was in his preſence, and in the preſence of a numerous corps of officers, who being called upon by the Court, have all unanimouſly refuſed, or I truſt, will refuſe to fix any one charge upon me. I have mentioned before, the circumſtance of my accuſer's ſilence for months, during which he was called upon by the duty he owed his country, to have ſtated my miſconduct, if any ſuch had exiſted. And his refuſal to do ſo, is ſtrong evidence of itſelf, that even in his opinion, my conduct was liable to no reproach.

But this is not all; even ſo late as the 5th of October laſt, I received a letter from him dated at ſea, conceived in terms of great good will and reſpect for me; in which, having occaſion to mention ſome prizes which had been taken by the fleet; he conſiders *that* as a ſubject of little moment to me, aſſigning *this* as a reaſon, "For I know you had rather "meet the French fleet." That fleet which he ſays I fled from!

Is this conſiſtent with the tenor of thoſe charges? Could the Man who wrote the one, believe the other? It is abſolutely impoſſible.—I cannot produce this letter in evidence; but when I go out of the Court, I will ſhew it to any gentleman who is deſirous to ſee it.

Another

Another thing more and I have done.

Sir Hugh Palliſer thought proper to addreſs the public by a printed news-paper, dated the 4th of November, principally as it ſeems for the ſake of aſſerting, that *he* was not, and inſinuating that *I was*, the cauſe of the French fleet not being re-attacked in the afternoon of the 27th of July.

In that paper he poſitively denies, that he received any meſſage by Captain Windſor ſaying a word about renewing the attack, and he calls the contrary aſſertion a falſe one. Captain Windſor has been called, and he has proved, that at five o'clock he received from me, and at about half paſt five, he delivered to Sir Hugh Palliſer himſelf, the *meſſage* to come with the ſhips of his diviſion into my wake, and that I only waited for him to renew the attack.

This account of Captain Windſor, has been attempted to be diſcredited by the Proſecutor, who has aſked Captain Bazely, and I believe one or two more, whether it was not a later hour than Captain Windſor named. I ſhall for that reaſon call witneſſes to confirm Captain Windſor in all the circumſtances of his teſtimony.

I owe it to him as an honourable man, to ſhew that his evidence is correctly true.

I will prove that the meſſage ſent by me, was preciſely the meſſage delivered by him at the time he ſpeaks to; and that it was exactly repeated by him to the Vice-Admiral. Yet after his own ears had heard, at half paſt five in the afternoon of a ſummer's day, that I waited only for him and his diviſion to renew the attack; this gentleman applies to me, ignorant, negligent, and cowardly as he now repreſents me, to certify his good behaviour, and to ſupport his character againſt the malice of his enemies.

He applies to me to ſign a paper containing many particulars directly contrary to the evidence you have heard upon oath; and which I will alſo ſhew to any one.

At preſent I have only to do with one of thoſe particulars. That paper (concurring with his attempts in this trial) contains this aſſertion, "That the calling his, and Vice-"Admiral Sir Robert Harland's diviſions into my wake, in "the evening, was not for the purpoſe of renewing the battle "at that time; but to be in readineſs for it in the morn-"ing." This my accuſer had the confidence to tender to me to ſign.

To ſign an aſſertion of a fact abſolutely unfounded, the contrary of which, I knew to be true, and the contrary of which Captain Windſor has proved, my accuſer knew to be true; how that gentleman felt when this came out, I know not; but if I could conceive myſelf in the ſame ſituation, I know that it would be difficult to expreſs what I ſhould feel.—*I cannot wiſh ſo heavy a puniſhment to my worſt enemy.*

F I N I S.

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The Hon. AUGUSTUS KEPPEL, ADMIRAL of the BLUE.

Held on Board his Majeſty's Ship the BRITANNIA, on Thurſday, January 7th, 1779, and adjourned to the Houſe of the GOVERNOR of Portſmouth, and held there till Thurſday, February 11th, 1779, when the ADMIRAL was *honourably* acquitted. Taken in SHORT HAND,

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